

MINUTES OF THE SPECIAL TOWN COUNCIL MEETING HELD ON  
JANUARY 23, 1996

I. Call to Order

The meeting was called to order by President Smith at 10:00 a.m. on January 23, 1996 in the Town Council Chambers. On roll call the following Elected Officials were found to be in attendance: Mayor Paul R. Ilyinsky, President Lesly Smith, President Pro-Tem Jack McDonald, Councilmen Samuel McLendon, Leslie Shaw, and Allen Wyett.

II. Invocation and Pledge of Allegiance

The invocation was given by Mrs. Pollitt, and President Smith led the Pledge of Allegiance.

III. Approval of Agenda

A motion was made by Leslie Shaw to approve the agenda. The motion was seconded by Mr. McLendon. The motion was carried unanimously.

IV. Discussion Of Restoration of Lake Worth Inlet Sand Transfer Plant-  
Discharge Piping (Deferred from the January 16, 1996 meeting).

Mr. Wallace discusses the status of the seismic investigation as discussed last, stating this is a critical phase of the work in order to establish the bottom of the jetty rock at the new location. Mr. Wallace stated they completed the land side boars and tried to accomplish the water side boars over the weekend, but were not able to accomplish this task due to weather and a mechanical problem. Mr. Wallace stated that they would get out tomorrow to try to accomplish the water side boars. Mr. Wallace says hopefully this will be completed by Saturday, if not sooner. Once the boars are complete, they have retained SDI, a testing firm, to perform a seismic profile which will indicate the elevation of jetty rock to determine the angle of entry for directional drilling and the depth they must be below the jetty to successfully complete the directional boar. They are planning 2 days for the seismic tests and 3 days to get results finalized to then come up with a revised profile. By February 2nd this should be done. Wallace projects that they can be mobilized back on site by February 12, 1996. Once mobilized back on site they expect the boars will complete within 6 weeks, which would be around the end of March. Provided the jetty rock is no lower than 22 feet below the jetty, they expect to be able to complete the boars, going in about 30 feet below the north edge of the land side of the jetty to ensure they will not be affected by rock that might have migrated over the years since this jetty was constructed.

The second issue is the Right of Way at the McArthur Property. Mr. Wallace stated he has been in contact with Wayne Fitzgerald and has asked the Town to help expedite this matter. He was told he would have an answer tomorrow, however, it is not simply an issue of the MacArthur Property alone approving the entry of the property, the Marret Corporation is also involved.

Mr. Wallace stated that in coming up with a revised schedule, the key is that if we can be done with the investigation by February 2, 1996, then they would need some time to establish the profile and get it approved. They would be back on site by February 12, 1996 and complete the project by the middle of March. Mr. Wallace stated that once the unknowns are investigated he would provide the Town with a schedule

The final issue that was brought up at last week's meeting was the design alternatives and Mr. Wallace stated that he discussed this with Dames and Moore. The issue of redesigning the sand transfer lines is not something that the contractor can provide to the Town. Mr. Wallace stated he is not a design engineer, however, they are more than willing to entertain any alternatives that Dames and Moore would want to design. One issue that was raised was two separate lines. There are some reduced risks, from a drillers standpoint, in doing two separate boars. The only downside to that is there will be two discharge points on the south jetty. While aesthetically there is a difference, operationally, as far as they know, there are no other disadvantages.

Mr. McLendon questioned the depth from the top of the jetty to the sand/ground surface inside the north jetty. Mr. Wallace stated the purpose of this investigation was to establish that depth, however, it was estimated by

Dames and Moore to be roughly 18 feet. Mr. Wallace stated that it was obviously much deeper than the estimated depth. In response to a question from Mr. McLendon regarding how far below the jetty rock the pipe was suppose to be, Mr. Wallace stated they were given an alignment in the original plans, however, that alignment could not be accomplished and missed the jetty rock. Mr. Wallace stated that after doing the landside boars they realized that once down 22 feet they hit a very well cemented zone that they felt was competent. There proposal is to be at least 8 to 10 feet into that cemented zone so that when the pipe is installed they would not have the problem with further settlement of rock to affect the pipe.

Mr. Tom Malone, a professional engineer and an associate with Dames and Moore, addressed the Town Council. Mr. Malone stated that he authored the design for this sand transfer pipeline. Mr. Malone stated that used survey data provided by the Corp of Engineers on their recent dredging activities. On the plan and profile sheets, as shown on Drawing # C-6, it shows a depth below the top of the jetty of approximately 20 feet to the top of the ground surface inside the inlet. Mr. Malone stated that the pipeline itself is installed on the north side of the jetty in the sand area and there is about 22 feet, as indicated, of beach-type sand that overlays the underlying bedrock. Mr. Malone stated that is consistent with the boarings that were done previously by Dames and Moore. In response to a question regarding the procedure of going with two discharge pipes, Mr. Malone stated that the distance between the two pipes would be a minimum of 30 feet. Aside from aesthetics, the design has the second pipe as a back up pipe in the event it becomes plugged. From a technical standpoint, there is no difference. The decision making process is the long-term use of the pipes and relates to the flow of mechanics and dynamics from a coastal sand movement standpoint. Mr. Malone stated he was not prepared to discuss this, however, stated there is a discharge that would be closer to the beach and provided more opportunity for the waves to move the sand down the beach. Mr. Malone stated he was not prepared to discuss this as he was not a coastal engineer and he was unsure about the dynamics of the advantage of placing the pipes further apart.

Mr. McLendon questioned if the drilling operation had been commenced south of the south jetty heading north, if there would have been a depth problem. Mr. Malone stated the contractor was given the option during the bid process, however, the south side had some severe limitations from a construction logistics standpoint. Mr. McLendon questioned whether there have been discussions regarding getting the sand moving from a temporary line on the ocean floor to get the sand over to the south shore. Mr. Dusey stated they would pursuing the matter of a temporary sub-line with the State this week. The problem is there is a dredging project going on at the inlet that will be started by the Corp of Engineers in a couple of weeks. That would prevent the temporary line because you can't have they get in the way of the dredging contractor. Mr. Dusey stated he would be researching whether the Town would need permits for a sub-line. If allowed to do on a temporary basis, without going into an extended permitting process, it is possible to get a line in fairly quick. Regarding the temporary sub-line, Mr. Malone stated that it is more of a policy of coastal planning issues as to whether the Town would like to construct two discharge structures and provide some flexibility in the future. Mr. Dusey stated that the only reason the Town would be interested in this procedure only if it would be an advantage to the contractor and would be no additional cost to the town. The contractor approached the Town in the past regarding the possibility of going with two smaller pipes and because of aesthetics and other considerations, the contractor was directed to continue with the 36 inch hole rather than two smaller holes. Mr. McLendon felt it would be more costly to the contractor, and in addition to the two holes, on the receiving end you would have the 30 foot spacing that would somehow have to be meshed together to get them to the right location. Mr. Wallace stated that they would consider the other alternatives, however, there would be additional costs to doing two separate pipes. This evaluation has not been done and he did not know what the design would be, however, it would involve two discharge structures. In response to Mr. McLendon, it was determined that the jetty rocks were anywhere from 10-14 tons each and are stacked on top of each other. Mr. Dusey stated that if the Town Council would entertain the use of two separate pipes that they consider that motion now. Mr. McLendon stated that he would be reluctant to do that at this time without first hearing from the consulting engineer for this project that stated that it had some potential advantages to get the job done faster. Mr. Dusey stated that the additional cost would be approximately \$30,000.

Mr. Dick Bresee of West Palm Beach, stated that the height from the top of the jetty to the sand inside the inlet depends on the day and the storms that have come through. Mr. Bresee stated that he was told by a gentleman who had been there for 20 years that he has seen times when the boulders inside the inlet were covered with sand and that the sandbar is normally not there when there are pumpings. Regarding the two pipes, Mr. Bresee stated that one of the options to increase the flow of sand through the present sand transfer plant is to move sand to it when you are not having a storm. One of the problems with this is disposing of the sand on the south side of the jetty. Mr. Bresee stated that if there were two pipes running different distances down the beach you would have two piles of sand and would ameliorate the problem of what you were going to do with the sand after you pump across when you don't have storm conditions. Mr. Bresee stated that the last time they put the sand down was a disaster because they put it down too low, allowing the waves to push the sand in to form a berm. The waves then went over the top of the berm, formed a lake between the berm and the dunes. This broke and cause a 20-30 foot wide riptide taking sand out to the ocean. The currents next to the dunes were running so fast that it dug a hole approximately two feet deep, three feet wide and 10 feet long. This cause not only a loss of sand, but presented a danger to anyone who may have fallen into the current. Mr. Bresee stated that the sand needed to be put at a higher elevation.

Jim Koontz, resident, addressed the Town Council and stated that the Town has given \$60,000 to the contractor over the last couple of months and now we are getting ready to give them another \$60,000 with the Town not fining them. Mr. Koontz stated that the reason people have contract is because the two entities don't know each other. Mr. Koontz stated that the contract is a legal agreement and there is no reason why either party should not enforce the terms of the contract. Mr. Koontz stated that this season for pumping sand is already lost and felt that the only recourse the Town had at this point was to go along with the contractor and see if they could complete the pipeline by the end of the pumping season. He also felt the Town should be firm with the contractor and that the Town should fine the contractor \$1000 a day from this point on. Mr. McLendon stated there has been no decision by this Council as to whether to invoke the \$1000 per day penalty or not. The contractor has been put on notice regarding the fine and the date of the commencement of the fine is still subject to review with respect to deficiencies of the construction plans and to adversities beyond his control. Mr. McLendon stated that the focus of this Council today was to determine how long it would be until the job would be completed.

Mr. Wallace stated that they are projecting completion by the last week in March, however, stated that once they had the results of their investigation they would present the Council with a complete schedule. Mr. McLendon requested Mr. Dusey proceed with his investigation of the alternatives and would like to hear more along the way as to what potential deficiency the contractor may have to work with, if any.

Attorney Randolph pointed out that nothing the Council is doing is authorizing an extended date beyond the original term of the contract and has not taken any action other than taking reports from the contractor as to what his proposed plan is and when he might complete the project. Attorney Randolph stated that the contractor should not take anything that is being done here as an action by the Council approving an extension of the term of the contract.

Mayor Ilyinsky stated that the important thing today is that the Town and the contractor have discussed the problems with hopes that the project will be successfully completed. Mrs. Smith stated that she would like the contractor to give a firm date on when he will have the seismic report, when he will come back to the Council and stated this has not been a pleasant experience. Mrs. Smith stated the contractor will come back to the February 13, 1996 Council meeting to update the Council on activities. Mrs. Smith stated they expected the sand transfer plant to be up and running and discharging sand in November. Mrs. Smith asked for a representative of the contractor to stand up and put the dates on the record.

Mrs. Smith stated that, as she understood, the contractor would have the report by the 2nd of February and will report back to the Council at the February 13 Council Meeting. Mrs. Smith stated that the contractor has promised a definite schedule for completion, which the contractor has already stated would be the end of March. Mr. Wallace stated that he is interested in the completion of this project.

Mr. Shaw stated there is a Water Committee meeting on the 2nd at 2:00 p.m. based on the fact that the contractor is expected to have the results of the report and asked the contractor to come to that meeting to let them know what has happened. Mr. Shaw stated there were enough meetings scheduled that the Council did not have to wait until the 13th for a report. Mr. Shaw stated that the Council and the Town understands their financial responsibility to the community. This contractor has not been paid for the work they are performing and is not an issue of giving them \$60,000, and there would be an accounting at the end. If there are fees, fines or assessments to be made at the end of the project, the Town and the contractor knows that will be done. Mr. Shaw stated he wanted the record to clearly show that the Council is not sitting here throwing money out - the contractor has received nothing from the Town. The contractor will perform, do the job, and any deficiencies will be adjusted on the final day.

Mr. Wyett stated that it is his understanding that the Town Council will meet just prior to the 501 meeting on February 5, 1996. Mr. Jones stated that the meeting was at 501 and if the Council would like to meet earlier it would not be a problem. The Council agreed to meet at 4:00 p.m.

V. Consideration of Town Cable Customer Satisfaction Survey for Comcast Cablevision.

Mr. Jakubiak addressed the Town Council, stating the survey was sent out - approximately 5500 copies - with the help of the Palm Beach Civic Association and the Citizens Association south of Sloan's Curve distributed the survey. The survey was also available at Town governmental facilities. Approximately 598 responses were received within the official time frame. The survey did not ask for comments, however, a number were received. Mr. Jakubiak prepared a summary of the survey results, and referenced pages 19 and 20, Appendix A and B. Mr. Jakubiak stated that those results that were less than satisfactory were summarized in Appendix A. In Appendix B, Mr. Jakubiak summarized those comments that were above satisfactory. Mr. Jakubiak stated that the summary would indicate the percentage of people that are unhappy with a particular area and a percentage of the number of people that responded that are happy in a given area. For example, on page 19 the one issue that came to the forefront is telephone availability. This is a standard that would fit into a customer service standard ordinance and one that the Town could regulate. Also on the summary is an area for appointments and customer relations, where Mr. Jakubiak stated there was less of a problem. On page 20 Mr. Jakubiak pointed out that 43% of the respondents felt reception was ranked above satisfactory and on the low end 12% felt that rates were above satisfactory. Mr. Jakubiak stated there was a mixture of positive and negative responses on the survey which indicated there are certain areas that the Town can address

through the franchise agreement and through the customer service standard ordinance.

Mr. Shaw felt the preparation of the survey was good and gave the Council what they were looking for as an evaluation by the residents. Mr. Wyett asked that, according to this survey, whether Mr. Jakubiak could pinpoint any recommendations to Comcast or the Council to suggest improvement in the areas controlled by the Council. Mr. Jakubiak stated that the survey results would be used in the third portion of today's meeting, which is the customer service standard ordinance. The survey was deliberately prepared in accordance with the FCC standards relating to a customer service standard ordinance.

Bill Gutman, 216 West Indies Drive, the owner of the second largest cable television system network, and stated that since 1992 to the present Congress has regulated the rate of basic cable service in the United States. There is legislation now pending before Congress which would de-regulate rate regulations in the sense that cable operators would be empowered to charge whatever the market would bear. The only break on prices would be competition. To the extent the survey shows reasonable satisfaction with rates that residents are paying, it is somewhat misleading when you look forward if Congress passes this new legislation.

Ann Herman, 2778 South Ocean Boulevard, addressed the Council and stated that negotiations were done some years ago for the buildings at the south end of town for rates. Ms. Herman stated that she felt Comcast has been very fair with the residents, giving them new cable, better quality reception and more channels. Ms. Herman felt that the Town has had very good service from Comcast and added that the only objection that she would state is the inability at times to reach them when there is a problem.

Vincent Filasco, 335 Australian, addressed the Council stating he had no problems with what he receives on TV, however, stated his problems arise from trying to reach Comcast when there are problems.

Mr. Jakubiak stated that in the report the positive and negative comments are separated. In response to Mr. McLendon, Mr. Jakubiak stated that federal law states it is up to the municipalities to negotiate their agreements. Mr. Jakubiak stated that in what he has reviewed in other municipalities, some have formed cable commissions on a regional basis and a local basis. Regardless of what the federal legislation says about rate regulation, the Town still has to negotiate a franchise. The reason this survey was done was to have documentation to find out how the cable system has been performing and how Comcast has been performing in this Town. Town Manager Doney stated that back in the early 1990's a policy decision was made by a prior Town Council as to whether to regulate or not regulate and that's what has led the Town staff and Town Attorney on the direction they are at today. He added that does not preclude the Town Council at a point in the future to decide there is a different course of action. That can evolve from not regulating at all or very restrictively regulating through a customer service standards ordinance and other tools that are available. Mr. McLendon stated that now that the FCC is going to abandon the base regulations the Town should get somebody competent on rate regulation and felt that the State Utility Commission or Public Service Commission. Mr. Doney stated the State Public Service Commission wants no part of it.

Mr. Wyett referenced an article in today's newspaper wherein it reported that ATT&T has entered with direct TV satellite transmission, which is the first major television cable competition this Town is going to see. Already some residents are converting to this service. Mr. Wyett felt that anything that had to do with regulating rates was out of the Town's control.

Mr. Jakubiak stated that the only part of the regulation process that the Council would be involved with are the new rate increases that go into affect from this day forward. Today, by federal law, you have to have a franchise agreement to operate cable in any municipality, but more importantly, if there were problems with the cable system and if the policy directive of the Council was to reject the franchise then the Town better have documentation available to protect the Town if they wanted to bring a new cable company into the Town. Mr. McLendon stated that it is a non-exclusive franchise and if any other cable company wanted to come into the Town and offer cable would have to enter into a franchise agreement.

Town Manager Doney stated that perhaps Mr. Gutman, with his experience and knowledge, could offer suggestions to the Council and further requested Mrs. Diane Christy, Director of System Development for Comcast, address the Council before they move onto the next agenda item.

Mrs. Diane Christy addressed the Council and introduced Mike Sheehee, Area Operations Manager for Comcast Cable. Mrs. Christy stated that she received the results of the survey and stated that overall she is pleased with how the residents feel. Mrs. Christy stated that while telephone service is the biggest issue, however, if you look at the results 67% of the people are satisfied or above. Mrs. Christy stated that they are addressing this issue and as they move toward competition these are important problems to solve. Mrs. Christy stated that Comcast is researching installing a major call center for this area and within the next 6-12 months is to put in a 24-hour, 7-day a week call center.

Mr. Wyett stated he was pleased with the promise of a new call center, but stated he would like to direct Mrs. Christy's attention to FP&L who's service for calling in is excellent. They have a computerized system that pinpoints an issue, eliminating the need for additional personnel, and gives you very fast response. Mr. Wyett stated that even if he does get through on the telephone, the ability to get executive action at night or on the

weekends is non-existent.

Mr. Shaw stated that he noted that Comcast's occupational license for the Town of Palm Beach states that they have an office at 225 Peruvian. Mrs. Christy stated that she reviewed all the old files when this franchise was first awarded and she determined that at the time there was a requirement that the company have a local office in the town. The location was maintained in case a resident wanted to drop off a payment Mr. Wyett felt it would be convenient for some residents if the office was staffed.

Mr. Jakubiak stated that during the term of the franchise agreement, the cable company has changed hands 3 times. There was at one time a requirement for a local office and that is an issue that the Town is suggesting the Council discuss during the franchise agreement. Mr. Jakubiak disagreed that a dentist office at the cost of \$200 a month was not complying with the intent of complying with the requirement of a local office is not acceptable to the Town. Mr. Jakubiak stated that he does not completely agree with the rate structure as Comcast has established it, however, the rate structure is left up to Comcast as to whether they want a Basic or Extended Tier.

Mrs. Christy explained to the Council that when the FCC came out with the rules governing rates, anything on the limited service (first level of service) can be regulated by a municipality if those so choose to be certified. The second tier of service, where most of the new channels are, (Value Pack) is overseen by the FCC. A local authority cannot regulate any service but Tier One. Mrs. Christy stated that if you add service then you are allowed to increase your rates based on programming costs. Mrs. Christy assured the Council that Comcast Cable has abided by the rules of the FCC. Mrs. Christy stated they are trying to make the service economically feasible for different groups of people and at this point it is not possible to pick and choose channels on an a la carte basis. Mrs. Christy further stated that Comcast tries to offer the services that offer a variety to people and try to make sure when negotiating contracts that the customers are provided for. Mrs. Christy discussed the various channels and some of the rules and regulations that govern providing them to customers. In December, for the first time, Comcast took four channels (History Channel being one) that people had shown an interest in, showed one channel every days for four days and let the customers vote on what they wanted. Comcast will continue this practice so the customers can have a part in the decision making process.

A discussion ensued regarding what specialty channels were offered by other cable companies that Comcast did not offer, particularly the Sports Channel.

In response to a question from Mr. Shaw regarding the possibility of adding more channels, Mrs. Christy stated that at the present time Comcast is at channel capacity. Mrs. Christy was requested to research whether this was technically possible or prohibited by federal law. Mr. Shaw questioned what percentage of Comcast revenue came from converter fees. Mrs. Christy did not have that information available. Mr. Shaw stated that the Council is interested in giving the residents an option to choose what they want, not a package deal.

Mr. Jakubiak reported that in a review of Adelphia Cable rates it was found that Adelphia did do exactly what the Council has asked. Adelphia broke costs out per channel and put it in a cable select package. The problem with Adelphia's rates, however, was if you took the extended basic as a package you were charged one rate. If you took the channels individually, additional dollars were added to the bill. The FCC ruled against Adelphia for doing such a package. Mr. Jakubiak warned that you must be careful in doing this procedure to insure that the cable company doesn't tier the system to their advantage.

Mr. Jakubiak stated that this Town service primarily is bulk accounts and noted that in the survey a lot of comments from the residents indicated that they do not know what their rates are or they are not informed of programming changes. The problem may rest with Comcast or the condominiums themselves because of lack of communication from their managers. The cable act does require the cable company to notify all their subscribers of any rate changes or programming changes 30 days in advance. Mr. Jakubiak felt this was the reason there were so many blanks in the surveys received.

#### V. CONSIDERATION OF COMCAST FRANCHISE AGREEMENT - PUBLIC HEARING.

President Smith stated that in the cover memo received, it indicated that Mr. Jakubiak and Town Manager Doney drafted the agreement, which was sent to Comcast Cable. Mr. Jakubiak stated that over a six month period the Town and Comcast reviewed the contract issue by issue. There were monthly meetings between Comcast, Town Staff and the Town Attorney. The agreement was discussed in detail and agreed that they did not want to get "married" to a template agreement that Comcast provided to other communities because they felt there were certain issues that related to this community that differ from other communities. Mr. Jakubiak stated that Council had two agreements before them today - one being the Town's typed agreement that was discussed with Comcast without any changes, and the second agreement is Comcast's agreement where they have elected to make wording changes and delete certain areas of the agreement. Town Manager Doney stated that the agreement attached to Mrs. Christy's letter dated 12/18/95 is the one that is to be considered today.

Town Attorney Randolph stated he has reviewed Comcast's agreement and stated that there are areas of the

agreement that have resulted in a "roadblock", requiring some policy decisions from the Town Council. Attorney Randolph stated that the following are areas of disagreement:

Page 7, Item 11 - Most Favored Community Clause

Attorney Randolph stated that Comcast has indicated they cannot agree to this cause and would have to let them speak to this issue.

Page 5, Section 5 - Term Agreements

Attorney Randolph stated that the Town staff is recommending a short term, however Comcast has indicated it prefers a 15 year term. Mr. Wyett felt this was a key issue, pointing out that the previous contract had a 25 year term. Mr. Wyett stated there are great strides in technology being made in the cable industry and felt the original suggestion of 3 years had a purpose to allow the Town to review this at that time. Mr. Wyett felt that as far as timing, this year was the worst to negotiate a contract because the industry is in such uncertainty, and therefore urged the Council to stand firm on the 3 year term.

Page 4, Section 4 - Gross Revenues

Attorney Randolph stated that the staff wants to make sure that the Town has a specific enough definition of Gross Revenues so there is not a dispute later. The Town wants an auditor to know from this agreement exactly what they are suppose to look at in that regard.

Section 13-14 - Working in Streets and Public Rights-Of-Way

Attorney Randolph felt a great deal of this section, if not all, could be eliminated by providing a sentence that will state that they shall comply with the Public Works Manual relating to working in streets and public rights-of-way.

Page 9, Section 16 - Remedies

Comcast has requested that the Town incorporate that within the Customer Service Standards. Attorney Randolph agreed and stated that most of this section should be placed within the Customer Service Standards, but the Town will need to receive some direction from Council.

Page 10, Section 17 - Notice and Cure Provision

Attorney Randolph stated Comcast has deleted this provision in its entirety and has written their own language.

Due to scheduled commitments, Town Manager Doney requested the Council discuss Page 7, Section 13 and Section 14 first.

Mr. Bowser, Town Engineer, stated the Town is recommending that cable wires (running new or upgrading projects) or facilities in need of replacement shall be placed underground at the cable company's expense. Mr. Bowser stated that Comcast added language "where technically feasible" and stated the Town cannot agree. Mr. Bowser felt that utility companies want to apply the standard that if it's going to cost more to do it a different way, it's not technical or practical. The Town feels that if there is some additional expense, as long as there is right-of-way and an opportunity that it is not so difficult or expensive for the company to provide, it is both practical and technical feasible. Comcast added "that at such time when the other utilities place their overhead wires underground". Mr. Bowser stated that the Town wanted to insure that this was at the cable company's expense and wants to add that at no time shall existing underground facilities be removed and placed overhead. In the second paragraph, Comcast added "where placement is technically feasible" again, and Mr. Bowser stated the Town is not sure how to define that. Mrs. Christy of Comcast Cable stated they were talking about in the case of a pedestal, you can only place them so far apart technically. Mrs. Christy stated that when they did the rebuild in the Town they worked very closely with staff to make sure the pedestals were placed where they weren't noticed and put screening around them. Mrs. Christy stated that Comcast wanted some leeway in the case of a resident not wanting the equipment placed in a certain spot the system will still work because it has to be placed within a certain radius. Mrs. Christy stated that Comcast would work with the Town should they have a project that would involve putting utilities underground. Mr. Wyett stated that he preferred to have individual agreements with the utility companies, permitting the Town to coordinate the projects, feeling that the Town would not be able to get all companies to agree to something at the same time. Mr. Wyett stated his concern with the appearance of all wires being above ground in the Town of Palm Beach and stated that it is one of the goals of this Council and succeeding Councils is to get all utilities underground. Mr. Wyett stated that this was not just for aesthetics, but for service as the Town loses a major utility every time there is a storm. Therefore, he would like this better defined in the contract as he was not comfortable with the term "technically feasible" and would like no other reference to other utility companies.

Mr. Bowser, Town Engineer, stated that he would like to have the paragraph re-written without any reference to any kind of a standard such as "technically feasible" and added that the Town's policy was that if there is something that needs to be replaced, it gets replaced within 3 feet. If there needs to be additions to systems, the Town works with the utility companies to try to locate the additions tastefully. Mr. Bowser stated that he could have this rewritten and review with Comcast. Mr. Wyett pointed out that this Council may approve a non-potable water system which would require this entire Town to be opened up street by street in an

orderly manner. At the time the trench is opened, that would be the time to put the utilities underground because a good piece of the cost is opening up the street.

Mr. McLendon requested information on what the Town did with the other utilities when it did Sea Spray, Sea Breeze, etc. Mr. Bowser stated that all the utilities on those roadways, to the best of his knowledge, are underground or in the majority of cases are provided in rear easements. The only pole line is an FP&L and street lighting circuits may have been left.

Mr. Shaw suggested that rather than trying to peg this to a utility, perhaps the contract could state that when the street is opened and there is cabling, it would be put underground.

Attorney Randolph stated that the Town wants "technically feasible" deleted entirely and if that is not acceptable to Comcast then the burden should be placed on them to come up with a more specific definition. Attorney Randolph stated he has written language to incorporate the other suggestions of Mr. Bowser re: when moved it would be at the cable company's expense and have left in "at such time as when other utilities place their overhead wires underground" but included an addition "or when the Town makes available a trench for other purposes".

Mr. Gutman addressed the Council stating that if the phone company decided to put its lines underground, Comcast would surely follow and vice versa. Mr. Gutman particularly liked the idea, since the Council is planning on possibly opening up the streets, of forcing at least Comcast to put wires underground. Mr. Gutman felt the telephone company would also follow this practice. Mr. Gutman suggested the Town appoint a mediator to resolve situations between adjoining homeowners when there is a problem in putting in a pedestal. President Smith stated that the Town already has Mr. Bowser and Mr. Dusey mediate these problems.

Mr. Bowser cautioned that if the Town opened streets to lay pipes for non-potable water and required the utilities to put wiring underground at the same time, it would result in wiring on top of the pipes and would make maintenance virtually impossible. Mr. Bowser suggested that if the Town wanted to use the same trench, may need to change the method to a more expensive trenching method to accomplish this. Mr. Bowser stated this would require an additional charge to the utility companies.

Mr. Wyett stated that at this point the Council has only reviewed one of the provisions and suggested a formula for the Council to review the whole contract. Mr. Wyett stated that the Council should make their comments item by item, but not specifically, and then send it back to committee to work out all the details.

Mr. Bowser stated that in regards to Section 14 on page 8, his recommendation is that the Town delete paragraphs A, B, C, D, and on page 9 delete paragraphs I, J, K, L and M. Mr. Bowser stated this should be substituted with a new paragraph that says "All work within the Town shall be in strict conformance with the Department of Public Works Engineering Divisions standards as applicable to public rights-of-way and easements within the Town of Palm Beach as amended from time to time by Town Council". Mr. Bowser felt this contained everything that was contained in the aforementioned paragraphs. With respect to paragraph E, Mr. Bowser stated staff had no concerns. Mr. Bowser stated that paragraph F was amended to take out on the 4th line the words "supervision and direction" and replaced it with the words "permit from". In paragraph G was amended on the second line after "advanced notice", added "for non-emergency work". President Smith did not feel 15 days notice was sufficient for non-emergency work. It was the consensus of the Council to amend the notice to 30 days for non-emergency work.

Town Manager Doney stated that Mrs. Martinuzzi has the technical issues and has reduced them to further detailed language changes and felt this would be most efficiently accommodated through our providing this further to Mrs. Christy so that Comcast insurance specialists can look at the amendments further. Mr. Doney did not feel the Council needed to look at these amendments unless they wanted to go into great detail of the insurance particulars. Mr. Doney stated that when the contract comes back before the Council, these issues could be addressed. Attorney Randolph stated that item on page 5, it was suggested that their 5 million change back to 10 million because the Town will not accept their 5 million. (Line A, Insurance Requirements, \$1,000,000 for bodily injury up to an aggregate of \$10,000,000.)

Mr. McLendon stated that he noticed the franchise fee is 5% and questioned why the Town gets 10% from other utilities. Attorney Randolph stated this was because of the FCC regulations.

At this point, the Council returned to Page 1 of the Contract.

Attorney Randolph stated that it was agreed that the Town would leave in the sentence regarding "potential satellite service cable video dial tone, etc", subject to Comcast discussing this with their attorney and would consider striking the last sentence except that an amendment would be to strike "where required by law" to read "where required by the Town". Therefore, the sentence would read "But excluding any potential satellite service.....other telecommunication service provided over existing or new telephone lines or any cellular or other wireless forms of communication service for which a franchise may be required by the Town." This

was acceptable to the Council.

Regarding Section 2, page 2, Attorney Randolph stated that the document throughout uses the term "cable company" and he agrees to move the definition up under basic cable and then provide a definition of cable company as Comcast Cable Vision of West Palm Beach, Inc. Attorney Randolph stated that he has indicated that the definition of gross revenues be left in the contract. Mrs. Christy felt the Town and Comcast were in agreement on what they wanted, however, the wording needed to be worked out.

Mrs. Christy stated that going back to granting of authority, it was agreed that wording suggested by Attorney Randolph would be fine, however, Comcast's attorney wants to add "pursuant to applicable law". Regarding the definitions, especially under gross revenues, the only issue was, Comcast attorney would like in the entire definition included in the definition portion of the contract. Mrs. Christy referenced page 4, paragraph 2, a different definition of gross revenues and their request was that all definitions be complete and consistent so that when reading the document you could follow it more clearly. Attorney Randolph stated this could be worked out. Attorney Randolph stated he had no problem with removing the definition of "franchisee". Mrs. Christy stated they agreed with the three customers and 60 minute period.

Mr. Gutman stated that his concern regarding the wording "as required by law" or "as required by the Town", neither the Town nor the law requires a franchise to deliver telephone service or a lot of other types of services that are going to come through the pipeline that Comcast had. Because no franchise is required for that purpose, the revenue generated from those services would not come within the definition of gross receipts. Mr. Gutman felt it was important to write that the Town has to grant a franchise with respect to the right of the cable operator to use the streets and other rights-of-way in this community. The telephone company already has easements and does not have to come back to the Town. Satellite services do not have to ask the Town for permission, nor does direct TV services. To the extent that the Town expects revenue from these types of sources, Mr. Gutman felt the Town should remove that language. Mr. Gutman stated that on page 3 regarding the transfer, he stressed the importance since the Town has already experience 3 different cable operators and pointed out the way cable companies are taken over by merger or purchase of stock and not in traditional sale of the cable assets themselves. Mr. Gutman felt it was critical that the Town cover these types of situations to be sure they approve of the background and character of the cable company that is running the system.

Attorney Randolph addressed Section 3, page 3, stated his notes indicate that gross revenues should be included and that this section would be merged. The Town did not agree with Comcast's inclusion "except as otherwise provided by law". Mrs. Christy stated that their attorney suggested "except as otherwise provided by Florida law". Attorney Randolph stated he would look at this suggestion. Mr. Shaw stated he was concerned that by including the percentages based on the fact that there are other franchise agreements with different rates that the Town may need to have a table of rates based on the service provided. Mr. Jakubiak stated that is why the Town included in parenthesis "or the maximum allowed by federal or state statutes". Mr. Shaw stated he would rather see a rate schedule or table that could be updated based on the source of revenue. Mrs. Christy stated that this is a cable television franchise only, however, Mr. Shaw stated that Comcast was putting in the option of including other services that may be provided. Mrs. Christy stated that Comcast was asking for a franchise to provide cable television only. Mr. Jakubiak explained that there is existing legislation and pointed out that Comcast owns Primestar that rents out satellite dishes and installs those dishes in homes. Mr. Jakubiak stated that was different than someone buying their own satellite dish and there could be a question whether there is any regulation which would require them to pay a percentage for the installation and rental of that equipment. Mr. Jakubiak stated this still required Comcast to work in homes and the reason he put in language excluding that is because if the legislation permits the Town to pursue different agreements for different telecommunication services Comcast would have to renegotiate a new agreement for that particular service and not incorporate that within this franchise. Mr. Jakubiak stated that in a recent article regarding franchise negotiations, a cable company is now installing antennas at the location where their cable outlets are for paging services and other wireless cellular services and there is an issue as to whether there is a collection source that should be included under an agreement. These issues have to be monitored as the legislation continues.

There was a discussion regarding gross revenues. Mr. Jakubiak stated that staff proposed in 1992 to do a franchise fee audit and the Council at that time did not approve that request. Mr. Jakubiak stated that the Town does not audit the cable company's books and that is why he cannot give an educated guess as to if the amount collected or revenue sources collected and what they may be. Mr. Wyett stated that if you request an audit it is because you suspect something is wrong. If there is nothing wrong the Town pays the bill, however, if there is something wrong then the cable company pays the bill. Mr. Wyett suggested that this provision be put in, stating that there are a lot of conditions in a contract that are not acted upon, however, the provisions are there to safeguard the Town.

Attorney Randolph stated he had no objection to the suggestion that he try to merge Sections 3 and 4, however, there are a lot of concerns about the strike outs under Gross Revenues and wanted to make sure that some services are covered and are specific. Attorney Randolph stated he does not agree to delete the first phrase "or the maximum allowed under federal or state statutes". Comcast felt this definition was too broad, however, the Town wanted to be more specific. Attorney Randolph stated he would meet with staff and then

with Comcast and return to Council with language he is comfortable with.

Regarding Section 5 - Term of the Agreement, it was the consensus that 15 years was too long and agreed with a 3 year term. Mrs. Christy stated that based on federal law whenever a franchise comes up for renewal, if they agree on a 3 year contract, they would need to begin the renewal process immediately. Mrs. Christy felt that a bigger issue was a financial aspect, stating that when a business only has an agreement for 3 years, it would be difficult for Comcast to make a commitment to any community with only a 3 year agreement. Mrs. Christy stated that Comcast would have to look at what point they see a return on their investment, whether they upgrade to a newer system or putting in new services or new technology. Mrs. Christy felt that with a 3 year agreement, Comcast would not look at Palm Beach to put in those new services and would have to look at areas where they would see a return on their investment. Mrs. Christy stated she would like to reach a happy medium. Mr. McLendon suggested that if there is some improvement that Comcast wishes to make within the Town that something could be addressed at that time. Mr. Wyett stated he felt very strongly about a 3 year contract because if Comcast had the opportunity for a good size capital investment to give the Town something it wanted, by mutual agreement this agreement could be scrapped and Comcast could be given a new agreement for a longer period of time. Mr. Jakubiak stated that the Cable Act is specific in stating that it is up to the franchise authority to say when they will set a deadline for renegotiating a contract and even though Comcast may state they would like to open negotiations it does not have to be brought back to the Council. In response as to whether Comcast had a capital improvement program that is now underway in the Town that could be affected by a shorter term contract, Mrs. Christy referenced the one-third of the underground cables to be installed and stated that would be a million dollar investment that Comcast Cable could not be done with a 3 year contract. Mrs. Christy pointed out that this is only a cable television contract and is not exclusive and another company could come into the town. Whatever terms are reached in this contract it is for cable television only, so if Comcast would get into the telephone business next year or next month they would again be before the Council negotiating a contract for that business. Mr. McLendon stated that other companies have not been successful in invading other company's territory and the Town asked, in the course for competition to be created, and received no response from any other company. Mr. McLendon stated that Comcast had the infrastructure in place that would almost make it impossible for another company to come in and be competitive. The results would be that Comcast would reduce rates to keep another company out and would end up splitting it so the total cost would go up. If the Town wanted underground cable then Comcast would have the opportunity to negotiate on that point. Mr. Jakubiak stated that he would like to read into the record that he has a letter dated 9/14/95 from Chuck Blain of Adelphia Cable and a letter dated 6/12/95 from BellSouth. Both of these letters indicate that these companies will not be coming into the Town of Palm Beach.

Attorney Randolph stated that regarding Section 7, Assignment Transfer or Sale of Cable System, he indicated he had no problem with the deletions as long as there is a good definition of transfer. Attorney Randolph stated this definition would be worked out with Comcast.

Attorney Randolph stated that regarding Section 8, Public Government Access, his notes indicate the changes are agreeable. Mr. Jakubiak stated he made one change that the total service would be free in governmental facilities but the Town would pay for the cost of any installation of additional outlets. In governmental facilities cable is used primarily to monitor hurricanes and for the fire department that is here full time on their shifts.

Section 9 - Rate Regulations - No changes.

Section 10 - Customer Service Standards - No changes.

Attorney Randolph stated they are at a stalemate regarding Section 11, Preferred Most Favored Community Clause. Mrs. Christy stated that the rates can be structured by community. Mr. McDonald questioned why Comcast would not be agreeable to give the Town of Palm Beach the lowest rate they have negotiated with another community and asked for a reason why Comcast would not want to do that. Mrs. Christy stated it depended on how the franchise was awarded and said it was hard to tie that into a 3 year agreement. Mrs. Christy questioned what would happen if West Palm Beach asks Comcast to put in a large capital expense. If Comcast had a Most Favored Community Clause with the Town of Palm Beach, Comcast would then be required to put that capital expense into the Town based on this agreement. Mrs. Christy stated that she would have to check with her attorney as to whether rates could be included in the Most Favored Community Clause. Mrs. Christy questioned what the Town was looking for to be included in this Clause. Mr. Jakubiak stated that this incorporated many issues, not just rate related. For example, if a community received interest on deposits then the Town would like that money also. Mr. Jakubiak stated that the Town use to get their franchise fees paid on a quarterly basis and requested it on a monthly basis so they could get interest on the money. Mr. Jakubiak stated that regarding collection, the Town has requested financial records to make decisions based on franchise fees and the collection of fines based on a Customer Standards Ordinance.

Mrs. Christy stated that when the Town Council requested that Comcast give the converter deposit dollars back, they did. Mrs. Christy said Comcast had no problem paying the franchise fees monthly. President Smith stated that it was clear that the Council wanted the Most Favored Community Clause in the contract. Mrs. Christy stated that the Town of Palm Beach is not the largest community served by Comcast Cable and

stated that the clause would have to be reworded and defined in order for her attorney to better understand what the Town wanted.

Section 12, Page 7 - Construction or Rebuild of Existing Cable System - no changes.

Review of Sections 13 and 14 have already been discussed by the Council and completed.

Section 15 - Performance Bond. Mrs. Christy stated she spoke to her attorney regarding his deletion of this section, and he stated it was a construction bond and he did not know what it was for. He stated that normally when a bond is posted, if the work wasn't completed the Town would collect the money, however, this was Comcast's money on any capital improvements they would be making and it is already constructed. Mrs. Christy pointed out that when Comcast did the rebuild the Town Council requested a bond, which Comcast supplied. Attorney Randolph stated the Town wanted this section left in the contract.

Section 16 - Remedies. Attorney Randolph stated that Sections 16, 17 and 18 are crossed out with the request of Comcast that they be included within the Customer Service Standards. Attorney Randolph stated he had no objections to that request. Mr. Jakubiak stated the only question he had including this in the Customer Service Standards Ordinance is that at least one of these sections relates to the franchise agreement itself and would that affect it in any way. To further explain, Mr. Jakubiak stated that "failure to provide administrative records" may be a request for the Town to do an audit, which is in the franchise agreement itself. Attorney Randolph suggested that staff take out as much of this as they could and include it in the Customer Service Standards and if they see anything that needed to stay within the franchise they come back to the Council.

There being no further comments from the Council, Mr. Jakubiak stated that the Council needed to rule on this issue by April 20, 1996, and would like to have another meeting scheduled in February in case there are any further issues to resolve.

Mr. Gilbertson, 111 Chilean Avenue, addressed the Council and congratulated them on the manner in which the Town is being run. He also stated that the new groins from the Gulfstream Beach area going north, specifically 11, 10 and 9, will be completed by the end of the week, making it clear for bathers in the area on the beach. No trucks or cranes will be used in this area according to the Director Nick Shields. He said it would pose no problem at all and this area could easily be fenced off and made accessible. The access stairwell is still in place, so all that is needed is a lifeguard stand. Mr. Gilbertson felt that since we are at the height of the season and the Town has had serious delays it would be a fine gesture to make part of the beach accessible this year. Mr. Gilbertson stated that when the residents lost the use of the beach their property taxes were not reduced and even though he brought this to the attention of the Property Appraiser in District Court, residents are still paying property taxes for having convenient beaches. Mr. Wyett stated this was discussed at the Council meeting two weeks ago and there is a question of liability. Mr. Doney and Mr. Dusey were going to look into this and advise the Council. Town Manager Doney stated that the Town does not feel that anything can be done until later in the month of February because of the liability and cordoning off of the area. There will be a further report on this at the February Council meeting.

#### VII. RECONSIDERATION OF PROPOSED CUSTOMER SERVICE STANDARDS ORDINANCE.

Mr. Jakubiak stated that the last time this was discussed was in August, 1995, and the Council approved the Town establish a cable hot line. The Customer Service Standards Ordinance would have to go back to ORS for consideration of the cable survey results and then numbers would be plugged in with the number of complaints they felt would be appropriate. The Ordinance would then come back to the Council for approval. Mr. Jakubiak stated he would not put the hot line in until the Ordinance is effective and all it would require would be a telephone answering machine. Mr. Wyett stated that since Comcast has stated they will be operating a 24 hour hot line, the Council may want to review that expenditure. Mr. Jakubiak stated that this would only be a line to record the complaints in violation of the standards, not a type of service where the Town would follow up 24 hours a day if an outage occurred. Mr. Wyett stated he did not see the validity of this since the Town has not spent any money on the hot line at this juncture. President Smith stated she did not agree as many of the complaints received on the survey were because people could not get through to Comcast. Mr. Wyett stated that Comcast has already addressed that concern, stating they have that problem in other communities as well, and would be operating a 24 hour hot line themselves. Mr. Jakubiak stated that the answering service would relate to the remedy section of the Comcast contract that is now being moved to the customer service standards section. Mr. Jakubiak felt that this would be the only area that would allow the Town flexibility to issue fines for cable service. Town Manager Doney stated that issue, assuming the Town Council is going to ask the Ordinance, Rules and Standards Committee to further review, can be held in abeyance until the outcome of that review.

Mr. Jakubiak stated that the Customer Service Standards Ordinance was based on percentages. Mr. Shaw stated that if the hot line was not in place and operational we would have nothing to base the Ordinance on and would not have a standards for the ordinance. Mr. Shaw stated that is why the hot line was approved a number of months ago. Mr. Shaw felt the Town should begin collecting data now. Mr. Jakubiak stated he had to put numbers in the ordinance on which penalties would be assessed, and hopefully we would never

had to assess a penalty if the service is good. Town Manager Doney stated that the next ORS Committee meeting is Friday, 2/9/96 at 10:30 that has 3 agenda items already scheduled and asked if this item would be preferred to that meeting. President Smith stated that it was not the intent to schedule this item on that agenda and hoped that the ORS meeting had been scheduled after the Council meeting. Mayor Ilyinsky did not think that members of the Town Council should attend every meeting of every committee, feeling that the committees would invite everybody's input forcing them to become mini-Council meetings. Mayor Ilyinsky did not believe the Charter intended the committee meetings to be run in that fashion. Mr. Wyett stated that he agreed with President Smith that the timing of the ORS committee meeting was set too fast. Mr. McDonald stated he consulted with Mr. Shaw who was running a re-election campaign and he did not want to have the meeting before the election and he didn't want to put it off until the Town Council meeting. President Smith stated that the books will be out, the agenda will be published and it will be impossible for Mrs. Pollitt on the Friday before the Town Council meeting to have this report done for the following Tuesday. President Smith said if the Town wanted to have the ORS meeting and not have it on the Council agenda that would be fine. Mr. Shaw stated that the ORS meeting was more of an informal workshop meeting and it did not matter if it was on the Council agenda. Attorney Randolph was encouraged to be at the ORS meeting for the code enforcement section, which was first on the agenda, however, did not need to be present for the remainder of the meeting.

For clarification, the Council directed that Mr. Jakubiak not schedule the Customer Service Standards Ordinance for the next ORS Committee meeting.

VIII. ANY OTHER MATTERS

None

IX. ADJOURNMENT

Mr. McDonald made a motion, seconded by Mr. Wyett to adjourn the meeting at 3:30 P.M. The motion was unanimously carried.

Mary A. Pollitt  
Town Clerk